

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. 2003-_____

A RESOLUTION DENYING THE WILD HORSE VALLEY HOMEOWNER'S ASSOCIATION
APPEAL AND SUSTAINING THE PLANNING COMMISSION'S APPROVAL
OF THE SCHARDT SECOND UNIT USE PERMIT
114 WILD HORSE VALLEY DRIVE, NOVATO
ASSESSOR'S PARCEL 146-293-01

SECTION I: FINDINGS

I. WHEREAS Firozeh Schardt has submitted a Second Unit Use Permit to create an approximately 564 square foot second dwelling unit within the existing residence and permitted addition, which is currently under construction. The second dwelling unit would be located behind the existing residence and would maintain the following setbacks to the nearest corresponding property lines: 39 feet to the southern side property line and 64 feet to the western rear property line. The subject property is located at 114 Wild Horse Valley Drive, Novato, and is further identified as Assessor's Parcel 146-293-01.

II. WHEREAS after holding public hearings on August 22, 2002 and September 12, 2002, the Deputy Zoning Administrator denied the Schardt Second Unit Use Permit application.

III. WHEREAS a timely appeal of the Deputy Zoning Administrator's denial of the proposed project was filed by the applicant, Firozeh Schardt, asserting that the basis of denial does not correspond with the written comments received from the North Marin Water District and Novato Fire Protection District.

IV. WHEREAS, the Marin County Planning Commission held a duly-noticed public hearing on November 4, 2002, to consider the Schardt appeal of the Marin County Deputy Zoning Administrator's denial of the Schardt Second Unit Use Permit and voted unanimously (7-0) to sustain the Schardt appeal and approve the Schardt Second Unit Use Permit. In support of this action, the Planning Commission found that the ambiguous language of finding 22.98.091(h) allowed them the ability to approve the second unit based on the fact that it conformed to the lot slope requirements of Section 22.73 of the Marin County Code.

V. WHEREAS, a timely appeal of the Planning Commission's approval of the Schardt Second Unit Use Permit was filed on November 8, 2002, by the Wild Horse Valley Homeowner's Association, asserting that: (1) the mandatory findings required by Marin County Code 22.98.091(a), (b), and (h) have not been met; (2) the Categorical Exemption is not valid because of improper noticing and because the subject property is not a legal lot of record; (3) an adequate water supply is not available to the subject property; and (4) the application is incomplete because it is in conflict with the Wild Horse Valley's CC&Rs.

VI. WHEREAS, the Marin County Board of Supervisors held a duly noticed public hearing on January 28, 2003 to consider the merits of the Wild Horse Valley Homeowner's Association appeal, and hear testimony in favor of, and in opposition to, the project.

VII. WHEREAS, the Marin County Board of Supervisors finds that the project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3 because it entails the creation of a new residential second unit in a residentially developed neighborhood that would not result in any significant impacts to the environment.

VIII. WHEREAS the Marin County finds that the proposed project consistent with the Marin Countywide Plan due to the following reasons;

- A. The project would provide housing opportunities on an infill site which is served by existing roadways, and necessary public and community facilities within the City Centered Corridor;
- B. The project would be consistent with the SF3 (Single-family, 1 unit per 1-5 acres) land use designation and contribute to the diversity of housing stock for Novato residents;
- C. The project would comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
- D. The project would comply with governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works;
- E. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services;
- F. The project would minimize soil disturbance and maximize retention of natural vegetation; and
- G. The project would create a second unit, thereby increasing the County's stock of affordable housing.

IX. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve new Second Unit Use Permit (Section 22.98.091 of the Marin County Code) because:

- A. The second unit is located on the same lot or parcel on which the owner of record maintains his/her principal residence.**

According to information that was obtained from the Marin County Assessor's Office, the property owner occupies the subject property as her principal residence and maintains a Homeowners Exemption on the subject parcel. Although the property owner has not recently resided on the subject property, conditions of project approval will ensure compliance with this finding by stipulating that the second unit is permitted only as long as either the primary or secondary unit is owner-occupied.

- B. The second unit meets all current property development standards of Title 22, for a dwelling unit of the residential zoning district in which it is located.**

The governing A-2: B-4 zoning district establishes the following development standards: 30-foot front yard setback; 20-foot side yard setbacks; 20% of the lot depth up to 25 feet maximum for the rear yard setback; and a maximum building height of 30 feet for primary

structures. The zoning allows for a maximum floor area ratio of 30 percent. The existing primary residential unit is approximately 2,465 square feet (per Assessor's records) with an attached 744 square foot garage and the proposed second unit is approximately 564 square feet. The proposal would contribute to 3,233 square feet of living space, resulting in a Floor Area Ratio (FAR) of 16.6%.

C. The second unit meets all current applicable building codes adopted by the County.

Issuance and completion of a Building Permit to construct the new second unit would ensure compliance with health and safety standards contained in the Uniform Building Code. As a condition of project approval, granting of this Second Unit Use Permit would allow the construction of only one secondary dwelling unit on the subject property in addition to the main dwelling unit.

D. The second unit is the only additional dwelling unit on the parcel.

Field investigations reveal that the subject property is currently developed with one single-family dwelling unit, and an attached garage. No other units currently exist on the subject property, and no other dwelling units are currently proposed. Both the existing primary and proposed secondary dwelling units would be located on Assessor's Parcel 146-293-01. As a condition of project approval, granting of this Second Unit Use Permit would allow only one secondary dwelling unit on the subject property in addition to the main dwelling.

E. Adequate sanitary service will be provided for the additional increment of effluent resulting from the second unit in accordance with state and county regulations.

The Novato Sanitary District currently serves the subject property. The existing sewer lateral can accommodate the construction of an additional dwelling unit on the subject property.

F. An adequate amount of water and quality of water will be provided for the second unit in accordance with state and county regulations.

The North Marin Water District has indicated that adequate water service is available for the second unit. As a condition of approval, the applicant would be required to provide the district with information in order to obtain a separate water meter for the unit.

G. The second unit will not be located on a parcel that is subject to environmental or public safety hazards such as flooding, unstable soils, or excessive traffic.

Staff review of maps entitled "Interpretation of the Relative Stability of Upland Slopes" prepared by Theodore C. Smith, Salem Rice and Rudolph Strand on file with the Marin County Planning Department indicates that the subject property is located in slope stability zone 1 which is regarded as the most stable designation on the above-mentioned map. Furthermore, review by the Department of Public Works indicates that the subject property is not subject to any significant environmental or public safety hazards which could adversely impact development on the site.

- H. The lot or parcel on which this proposed second unit is to be located meets the minimum building site area requirements of the zoning district in which it is located. The slope ordinance shall apply in determining the minimum size of the parcel where appropriate.**

Although the approximately 19,375 square foot property does not conform to the 1-acre minimum lot size requirement by the A-2: B-4 zoning district governing the subject property, it conforms to the minimum lot area standard of the Slope Ordinance. Therefore, the project meets the intent of Marin County Code Section 22.98.091(h). In addition, the construction of a new second unit would not result in a floor area that exceeds the allowed 30%.

- I. The addition of a second unit maintains the scale of the adjoining residences and blends into the existing neighborhood by the use of building forms, height, materials, color, and landscaping appropriate to that setting.**

The proposed second unit is visually screened by the existing residence. The proposed project would require only minor interior and structural modifications (as required by the Uniform Building Code) to the existing residence and would not increase the height, building footprint, or floor area ratio of existing development, due to the area of the proposed unit being under construction through the issuance of a Building Permit.

- J. The second unit meets all standards for its location set by the applicable community plan or resolutions adopted by the Board of Supervisors.**

The subject property is located in Census Tract 1031 which allows the construction and legalization of second dwelling units, and the proposed second unit would be consistent with Marin County Code Section 22.98.020. While the Covenants, Codes, and Restrictions (CC & Rs) for Wild Horse Valley do not allow for second units, the applicant has signed the zoning application stating that she is aware that the County does not take CC & Rs into consideration when granting permits.

- K. The floor area of the primary and second units combined shall not exceed the floor area ratio of the particular residential district in which the parcel is located, and in no circumstance shall the floor area of the second unit exceed 750 square feet.**

The proposed 564 square foot second unit would contribute to approximately 3,233 square feet of development on a 19,375 square foot lot, resulting in a floor area ratio (FAR) of 16.5%.

- L. The parcel should accommodate two (2) off-street parking spaces for occupants of the second unit in addition to the two (2) off-street parking spaces required for the primary dwelling unit.**

The project has been designed to accommodate adequate on-site parking spaces in accordance with the parking standards contained in Title 24 of the Marin County Code. The Marin County Department of Public Works, Land Use and Water Resources Division staff have reviewed the project and determined that the subject property will provide adequate off-street parking, 5 off-street spaces, to serve both the primary and secondary dwelling units.

- M. The street upon which the parcel fronts shall have the minimum width necessary to allow the safe passage of emergency vehicles. For streets along which parking is prohibited on both sides, the minimum width shall be twelve (12) feet. For streets along which parking is permitted on one side, the minimum width shall be eighteen (18) feet. For streets along which parking is permitted on both sides, the minimum width shall be twenty-four (24) feet. For privately maintained streets, the minimum width shall be eighteen (18) feet. (Ord. 2935.2 (part), 1987)**

The public right-of-way serving the subject property allows parking on both sides of the right-of-way. Therefore, the roadway serving this property meets the road width standard identified above and would allow the safe passage of emergency vehicles.

XII. WHEREAS the Marin County Board of Supervisor's finds that the bases for appeal cannot be sustained and that the Planning Commission acted appropriately in approving the Schardt Second Unit Use Permit due to the following:

- A. The mandatory findings required to approve a Second Unit Use Permit have been made. The principal finding considered in the Planning Commission's deliberations is a requirement contained in Section 22.98.091(h) of the Marin County Code that second unit properties meet the minimum lot area standard of the governing zoning district (refer to Finding IX (H) above). The Planning Commission found that the ambiguous language of Section 22.98.091(h) of the Marin County Code allowed them the flexibility to find that the subject property met the minimum lot size requirements based on lot slope requirements (MCC Section 22.73.010), which would require a lot area of approximately 12,000 square feet for a 17.4% slope, where one-acre is the minimum required lot size;
- B. Conditions of approval for the Second Unit require the property owner to maintain his or her principle residence on the subject property and provide written evidence to the CDA once the second unit has been completed and occupied. The condition further stipulates that only family members shall occupy the unit. Failure to comply with these requirements will result in code enforcement actions and possible abatement of the unit;
- C. The Community Development Agency's zoning application includes a declaration for the property owner's signature indicating that the second unit proposal does not conflict with CC&R's in effect for the second unit property. Although the property owner signed this application, the CDA does not enforce CC&R's and may grant permits even if they are in conflict with an area's CC&R's. The mandatory finding for approval of second units does not include compliance with CC&Rs that may apply in the project area;
- D. The public notice for the Schardt appeal to the Planning Commission and the appeal to the Board of Supervisors correctly identified the Categorical Exemption as 15303, Class 3, which would allow construction of a new residential second unit. The exemption has been reviewed and signed by the Marin County Environmental Coordinator and is valid because there is no evidence in the administrative record of any potential significant environmental impacts; and
- E. An adequate amount of water is available to serve the property as indicated by the North Marin Water District. The District is on record as stating that they can serve the proposed second unit. The appellant submitted information to the County that called this finding into question, and the Deputy Zoning Administrator relied in part upon the information as a basis for denial of the project. Subsequent to the denial, however, the District verbally reiterated their ability to serve the project and the second unit was approved by the Planning Commission on the basis that an adequate amount of water is available to serve the subject property based on written comments received from the District.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County hereby approves the Schardt Second Unit Use Permit (02-22) subject to the following conditions:

Marin County Community Development Agency, Planning Division

1. Pursuant to Marin County Code Section 22.98.071, the Schardt Second Unit Use Permit (SU 02-22) is approved to create an approximately 564 square foot second dwelling unit within the existing residence and permitted addition. The second dwelling unit is approved to maintain the following setbacks to the nearest corresponding property lines: 39 feet to the southern side property line and 64 feet to the western rear property line. The property is located at 114 Wild Horse Valley Drive, Novato and is further identified as Assessor's Parcel 146-293-01.
2. Except as modified herein, plans submitted for a building permit shall substantially conform to plans on file in the Marin County Community Development Agency – Planning Division and identified as "Exhibit A," entitled, "Proposed Second Unit," consisting of (1) two sheets prepared by the applicant received June 26, 2002; (2) nine sheets prepared by Samimi Associates dated April 20, 2002; and (3) three sheets prepared by Cyrus Mashhoodi dated April 23, 2002. Prior to the issuance of a BP, the applicant shall record a deed restriction stipulating that the second unit will only be occupied by family members.
3. The second dwelling unit is only permitted if the property owner maintains his/her principal residence on the subject property, and no additional dwelling units may be permitted on the subject property. Prior to issuance of a Building Permit, the property owner shall record a deed restriction stipulating that the second unit shall be occupied only family members. Said deed restriction will be reviewed and approved by County Counsel prior to its recordation.
4. Construction activity is only permitted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 4:00 p.m. on Saturday. No construction activity shall be permitted on Sunday or Holidays. At the applicant's request, the Director may administratively authorize minor modifications to these hours of construction.
5. It shall be the responsibility of the applicant to store all construction materials and equipment at the site (or secured at an approved off-site location) in such a manner as to permit safe passage for vehicular traffic at all times. Every effort shall be made by the holder of the building permit to strictly limit the number of vehicles used to transport workers and materials to the site to the minimum number necessary. No authorization to trespass upon other private property is granted or implied by this approval.
6. Only those trees shown on the site plan as proposed to be removed, if any, may be removed. No other existing trees on the subject property shall be removed except to comply with local and State fire safety regulations, to prevent the spread of disease as required by the State Food and Agriculture Department, and to prevent reasonably safety hazards to people and property.
7. PRIOR TO FINAL INSPECTION, this Notice of Decision shall be recorded at the Marin County Recorder's Office.
8. Any changes or additions to the project shall be submitted to the Community Development Agency for review and approval before the contemplated modifications may be initiated.

Department of Public Works, Land Development

9. PRIOR TO ISSUANCE OF A BUILDING PERMIT, the plans must show provisions for erosion/sedimentation control and protection.

Novato Fire Protection District

10. PRIOR TO FINAL INSPECTION, the applicant shall fulfill the following requirements:

- a. An automatic residential fire sprinkler system is required to be installed in all new residences including garages conforming to NFPA Standard 13d, Fire Protection Standard #401, and as modified by the Fire Marshall. Plans and hydraulic calculations shall be submitted to the Fire Marshall for review prior to installation. Contact the North Marin Water District for an application to upgrade the domestic meter size to a minimum of 1". Additional sizing may be required due to available pressures and fire flow. This requirement may be waived provided the new and existing remodel and addition does not exceed 50% of the total existing floor area.
- b. The existing fire hydrant nearest the structure and located by the Fire Marshall shall have the body upgraded to have at least one 4 1/2" and one 2 1/2 " outlet. Contact the North Marin Water District for hydrant specifications and installation.
- c. Fire hydrants shall be installed, tested, and operational.
- d. The address shall be posted clearly visible from the street with numerals illuminated and contrasting color to their background conforming to Fire Protection Standard #205.
- e. An irrigated "greenbelt" vegetation management plan (VMP) – Fuels Management Plan conforming to the standards of the Novato Fire District shall be prepared and implemented at the site. The VMP – Fuels Management Plan shall conform to Fire Protection Standard #220. The plan shall be incorporated into the landscape plan for the project and submitted to the Fire Marshall for review prior to implementation.

North Marin Water District

11. PRIOR TO ISSUANCE OF A BUILDING PERMIT, the applicant must make financial arrangements with the Water District for water service to the second unit.

SECTION III: ACTION, VESTING, AND PERMIT DURATION

NOW, THEREFORE BE IT FURTHER RESOLVED that the Marin County Board of Supervisors hereby denies the Wild Horse Valley Homeowner's Association Appeal and sustains the Planning Commission's approval of the Schardt Second Unit Use Permit based on the ability to make all of the mandatory findings for grant of a Second Unit Use Permit pursuant to Section 22.98.091 of the Marin County Code.

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Second Unit Use Permit approval by obtaining a Building Permit for the approved work and substantially completing all work before January 28, 2005, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date above and the Director approves it. An extension of up to four years may be granted for cause pursuant to Sections 22.82.130, and 22.88.050 of the Marin County Code.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Use Permit shall be valid indefinitely so long as the applicants or subsequent owners of the subject property comply with the conditions of project approval. In the event that the terms of this Use Permit are violated or that the approved uses are carried on in such a manner as to adversely affect the health, welfare, or safety of persons residing in the neighborhood, this Use Permit could be revoked or suspended in accordance with the terms and provisions of Chapter 22.88 of the Marin County Code.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 28th day of January 2003, by the following vote wit:

AYES: SUPERVISORS

NOES:

ABSENT:

ANNETTE ROSE, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

Attest:

Mark J. Riesenfeld
Clerk of the Board of Supervisors